

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓ, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON BUSINESS, ENTERPRISE AND INNOVATION

Dé Máirt, 5 Feabhra 2019

Tuesday, 5 February 2019

The Joint Committee met at 4 p.m.

MEMBERS PRESENT:

Deputy Lisa Chambers,	Senator Aidan Davitt,
Deputy Billy Kelleher,	Senator Pádraig Mac Lochlainn,
Deputy Tom Neville,	Senator James Reilly.
Deputy Maurice Quinlivan,	

DEPUTY MARY BUTLER IN THE CHAIR.

The joint committee met in private session until 4.56 p.m.

General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018: Discussion

Chairman: Members will recall that the general scheme of the companies (corporate enforcement authority) Bill was referred to this committee on 4 December. At our meeting on 22 January, we agreed that it would undertake pre-legislative scrutiny of the general scheme. I welcome the officials from the Department of Business, Enterprise and Innovation: Ms Sabha Greene, Ms Eadaoin Collins, Ms Helen Curley, Mr. Matthew Day and Mr. John Maher.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. If they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I remind witnesses that the presentation should be no longer than ten minutes. Members have been given copies of the presentation submitted by today's attendees. I now invite Ms Greene to make the presentation on behalf of the Department.

Ms Sabha Greene: I thank the Chairman and committee for the opportunity to present today. As members will have seen from the general scheme, the Bill covers a number of areas which is why there are three company law sections in the Department represented here today.

The general scheme of the Companies (Corporate Enforcement Authority) Bill gives effect to two of the 14 measures published in November 2017 in the document entitled, Measures to Enhance Ireland's Corporate, Economic and Regulatory Framework - Ireland combatting "white collar crime". The two measures contained in this Bill are to establish the Office of the Director of Corporate Enforcement, ODCE, as an agency that is better equipped to investigate increasingly complex breaches of company law and to implement recommendations of the Company Law Review Group, CLRG, on corporate governance. The general scheme also incorporates some additional provisions. It implements recommendations of the CLRG on shares and share capital and introduces some new transparency measures with respect to companies, the conduct of liquidations and the Register of Companies.

The establishment of the ODCE as an agency is dealt with in part 2 of the general scheme. As mentioned already, the Government decided in late 2017 to establish the ODCE as an agency with a commission-type structure and distinct from the Department. Accordingly, the general scheme provides for establishment of the ODCE as an agency, to be named the corporate enforcement authority. The commission structure is modelled on the Competition and Consumer Protection Commission, CCPC and, therefore, many of the provisions are inspired by provisions in the legislation that established the CCPC. In some cases, the recent legislation establishing the Data Protection Commission has also served as a precedent.

The new authority will have between one and three commissioners, one to be chairperson and each will be appointed by the Minister following a recruitment process conducted by the Public Appointments Service, PAS. This structure and flexibility is intended to allow the authority to adapt if its workload expands significantly or if it needs to organise its work into discrete areas or functions. Another feature of the scheme with respect to the authority's autonomy is that it provides that the authority will be able to determine itself the skills, levels and numbers of staff it will need to conduct its work, subject to overall budgetary sanction and approval.

All of the current functions of the ODCE will be carried over to the new authority. These include encouraging compliance with the Companies Act 2014, investigations of suspected offences and non-compliance with the Act, prosecution of summary offences, referring indictable offences to the Director of Public Prosecutions, DPP, and the exercise of certain supervisory functions with respect to liquidators and receivers. The scheme also includes savers for any work under way at the time of the transfer from the ODCE to the authority.

The Government also decided in 2017 to better equip the new authority to investigate increasingly complex breaches of company law. While the current range of powers of the ODCE will be carried over to the new authority, some new investigative tools have been identified and added. The first of these is a development of the current power of search and entry at head 46. The intention here is to meet the changes arising from technological advances and to allow the authority to get a search warrant that enables it to search for electronic records that a company may hold on a server that is remote from the company or to be able to use its own equipment, where the equipment of the company is a little slow or old. This is new ground and, if feasible, this power will be of interest to other investigative bodies such as An Garda Síochána. For this reason, and to ensure that it is workable, robust and includes appropriate safeguards, the Department will be developing this provision in consultation with the Offices of the Attorney General and the Parliamentary Counsel as well as the Department of Justice and Equality.

Another new tool is the provision in head 45 on the admissibility of written statements. This is a statutory exemption from the hearsay rule, allowing the courts to consider written statements as evidence in certain circumstances. This is modelled on a provision in the Competition and Consumer Protection Act. Alongside these provisions in the general scheme, the Department is working with the Department of Justice and Equality with a view to giving the new authority a power under the forthcoming communications (retention of data) Bill to apply directly to the courts to retain specified telecommunication records for an investigation.

The general scheme also introduces new measures with respect to liquidations that are designed to enhance the authority's powers. Part 5 introduces a new ground for the authority, or others, to apply to the courts for an order restricting a person's ability to act as a company director. In particular, it enables the authority to apply for a restriction order where a director of a company has failed to meet certain requirements in the course of that company becoming insolvent. This is intended to address the situation where a director does not conduct an orderly

winding up of a company. A consequence of this can be that creditors, including employees, cannot get paid from the company's remaining resources or, in some cases, cannot access the State's insolvency fund. This is based on a recommendation of the Company Law Review Group on the protection of employees and unsecured creditors. The general scheme also provides a power for the authority to request that a person acting as a liquidator provide evidence to the authority that he or she is qualified to act as a liquidator in accordance with the requirements of the Companies Act 2014.

The general scheme gives effect to recommendations included in two reports of the Company Law Review Group, namely, its reports on corporate governance and on shares and share capital, both published in 2014. These provisions are encompassed in Parts 3 and 4 of the general scheme and most may be categorised as technical in that they address omissions, provide clarifications or rectify perceived anomalies. As a rule, they arise from the large consolidation and modernisation project that took place between 2012 and 2014 and resulted in the Companies Act 2014.

Part 3 is concerned with shares and share capital. These heads are intended to rectify some perceived anomalies regarding share capital following the reform of company law in 2014. They reinstate provisions or clarifications from the now repealed Companies Acts 1963 to 2013 concerning the use of a company's share premium account, the payment of commission to investors in a share issue of a public limited company, PLC, and the law concerning the share management of unlimited companies. In other cases, they are clarifications of the existing law.

Part 4 is intended to clarify certain corporate governance and other issues affecting the administration of company meetings. Their purpose is to address anomalies and unforeseen consequences and to reaffirm the overall policy approach to the legislation. As mentioned earlier, the provisions on restriction orders for directors are based on a third report of the Company Law Review Group.

The general scheme takes the opportunity to introduce some measures that are designed to improve corporate transparency. The first of these is head 42, which is concerned with the frequency at which liquidators must submit their reports to the Companies Registration Office. At present, only periods of six months or longer may be prescribed. However, a gap can arise where there is less than six months between an interim report and the final report which is supplied at the conclusion of a liquidation. Head 42 will facilitate the submission of interim reports more frequently, where necessary, to address such a gap.

Head 43 introduces a requirement for directors of Irish registered companies to provide their personal public service number, PPSN, to the Companies Registration Office. This information will not be publicly available but it will enable the Companies Registration Office to verify the accuracy of information supplied to it on foot of the statutory obligations in the Companies Act 2014. As well as supporting accuracy, this is intended to address the situation where one person uses different versions of his or her name on various company returns in order to appear as more than one person or to avoid the prohibition on holding more than 25 directorships at any one time.

Finally, head 47 proposes the deletion of an exemption from the rule that companies include the names of their directors on their company letterhead and correspondence. This exemption was introduced in 1963, when the change of director required a new print run of stationery every time in order to comply. In light of technological advances, this exemption from transparency requirements is no longer considered justified.

I am happy to take questions now.

Chairman: I thank Ms Greene. I will start with a question related to the first paragraph on page 2 of the presentation. Ms Greene said that the scheme also includes savers for work already under way at the time of the transfer from the ODCE to the authority. I ask her to explain that statement. I presume it means that work already under way will be transferred across.

Ms Sabha Greene: Yes, cases or investigations already commenced will be transferred because the transfer will happen overnight. Proceedings might have been issued in the name of the Director of Corporate Enforcement and it is important they would not fall on the basis of a technicality such as that.

Chairman: Work currently commenced will automatically transfer to the new agency.

Ms Sabha Greene: Yes.

Chairman: Thank you.

Deputy Billy Kelleher: Is it a sad indictment on a Department that an agency cannot function under its remit? Why is it that for an agency to function properly it must be transferred out of a Department? Why are Departments not capable of managing agencies? The Office of the Director of Corporate Enforcement has been a failed entity to date - an appallingly failed entity bordering on negligence. Leaving that aside, why is it always necessary to move an entity out of a Department for it to function properly? Are the Departments incapable of allowing entities to operate within them?

Ms Sabha Greene: There are reasons the Government has decided the agency should have greater autonomy and be separate from the Department. As an office of the Department it is a section of the Department and it forms part of the pool of the resources that are available to the Department. When an entity is separate and autonomous it has much more control over its resources. For example, if the ODCE wanted to recruit IT staff that request would be one of a number of requests to the Department's human resources section. If the priorities of the Department as a whole are such that resources have to be put into a different area then the ODCE request may be lower down on the list of priorities. As a standalone entity it has more control over its own resources because it does not form part of the pool of Department as a whole.

Deputy Billy Kelleher: The Department is the paymaster. The Department is the entity that decides the budget of the agency.

Ms Sabha Greene: Yes, in consultation with the Minister for Public Expenditure and Reform.

Ms Eadaoin Collins: We are taking into account some of the lessons learned from Judge Aylmer's findings as well. We are transferring the office to an agency to enhance its autonomy. One of the shortcomings identified by the judge was that in terms of staffing and skills the office, at that time, did not have the necessary depth of experience in criminal investigations. There is a specialised skillset required within the agency. It will need to have greater autonomy to recruit those specialised resources and also to retain them. As stated by Ms Greene, currently the mobility structure is such that people can move into the office and out into the Department. The staff of the ODCE, when fully established as an agency, will be dedicated resources for that agency. It is about increasing the agency's ability to recruit and retain staff and enhancing its resources beyond what is currently available to it. The agency will have greater control over

the deployment of its resources and so it will be flexible enough to restructure itself to cope with, for example, a significant increase in caseload, as occurred in the office in 2008. There will also be a dedicated and specialised career path within the agency. Also, as an agency of the Department, it will have sanction to replace staff on a like-for-like basis. It will have the ability, subject to the consent of the Departments of Business, Enterprise and Innovation and Public Expenditure and Reform, to appoint its own staff and determine their grades.

Deputy Billy Kelleher: Mr. Drennan's analysis of the failure in the Seán FitzPatrick trial, its collapse and gross incompetence, which bordered on negligence and, potentially, criminality in terms of how parts of the case were conducted, was sent to the Minister and subsequently could not be published on the Attorney General's advice. In drafting this legislation and trying to ensure there is no repeat of the mistakes that were made in that particular shambles, how did the Department take into account the findings of Mr. Drennan's report not having seen it, or have they had sight of it? How do we know that this legislation will be compatible with the aims and objectives of ensuring there will be no repeat of the mistakes made in the FitzPatrick trial, taking into account Judge Aylmer's findings in regard to the failures of the Office of the Director of Corporate Enforcement in terms of its administration, prosecutorial role and governance and the exposure during the trial of statement and witness tampering? How do we know this particular legislation will underpin and ensure the office will not repeat those mistakes in light of the fact that nobody has had sight of Mr. Drennan's report and, therefore, cannot act on it?

Ms Eadaoin Collins: I have read the report. The account that was published outlines the findings of Judge Aylmer. Judge Aylmer's ruling in itself is extremely clear. He has identified the investigative shortcomings. In essence, the most significant shortcoming was around the collection of evidence. It led to some of the judge's findings around contamination of witness statements. Those were procedural issues as opposed to a weakness in the legislation. Judge Aylmer did not find any deficiencies in the legislative process. However, it is clear that procedures needed to be changed and they have been changed to ensure a Garda takes the lead in the collection of evidence from witnesses. The staff of the office have undergone specialised training in witness statements. The Bill builds on the reforms in the collection of evidence by promoting the ongoing, very close working relationship that the office has with An Garda Síochána.

Another issue was that the office lacked the depth of experience in criminal investigations which led some of the shortcomings in the collection of evidence. This pointed to the need for specialist recruitment. The lack of forensic accountant capability at the time for the scale of the multiple investigations being undertaken was another issue. The report also pointed to the lack of inhouse digital expertise. Those reforms have been addressed. The office will continue to evolve and its skills needs will be reviewed on an ongoing basis. As outlined earlier, the office, as an agency, will have enhanced powers to recruit and retain staff. This speaks to some of the skills and staffing deficiencies.

A key finding was that the office was not equipped to undertake multiple complex investigations in parallel. This will be addressed by the new structure. The structure as set out in the Bill is a commissioner-type structure. This provides the flexibility for the organisation to change its working structures and relationships to cope with an increase in workload. On the lack of digital capability that existed at the time, the office has recruited a digital forensic specialist and forensic accountants and it has built a new digital infrastructure. Even though legislative deficiencies were not identified, we have considered some of the enhanced powers

that the agency may need, one of which, as outlined by my colleague in the opening statement, is enhanced powers of search and entry for information stored digitally. We are evolving the Bill to enhance the capacity of the office. We are addressing the skills issues and the collection of evidence issues in the Bill.

Ms Sabha Greene: Deputy Kelleher spoke about the confidentiality around the director's report making it difficult for legislators to match it with what is provided for in the Bill. I refer to one aspect that will change in the Bill. The Deputy may recall that Mr. Drennan's report was given under section 955 of the current legislation. That has been slightly changed in the heads of this Bill. The other confidentiality provisions in section 956 will be carried over now because the investigation has to be protected and all of that. However, section 955 is slightly changed now in that the chairperson of the new authority will be accountable to a committee such as this one and if the committee asks for information where it is not clear whether it can be disclosed, there is a new provision to go to the High Court and a judge will decide if it can be given to the committee.

Deputy Maurice Quinlivan: To come back to Mr. Drennan's report, we have not had sight of it. Nobody has had sight of it yet the heads of the new Bill have been brought forward. How do we know what to go with when we do not know the problems highlighted in that report?

In terms of my questions, first, do the witnesses believe the ODCE is currently fit for purpose?

Ms Eadaoin Collins: Yes, the ODCE is fit for purpose. I believe it has a very strong track record. To put this into context, there were a number of investigations in parallel and there was only one where adverse shortcomings were identified. The office has a good track record in terms of prosecutions. It has a number of high profile prosecutions. There was a lot of activity as well. From 2007 to 2018, more than 1,860 directors were restricted and more than 240 directors were disqualified.

It must be remembered also that the ODCE undertakes a very proportionate approach to company law enforcement in order to free up time in the courts and free up businesses' time where serious breaches of company law are not in question. It undertakes a proportionate regime where it offers advice. It issues directions if the breaches are not very serious. It then moves on to a prosecution or a voluntary undertaking, which has been an activity since 2015, again to free up time in the courts. It has a very good track record in terms of the high profile cases. There are four I could refer to since 2014; I have the details of those available. It is also doing ongoing advocacy work, and it undertakes a good deal of work in restrictions and disqualifications as well.

Deputy Maurice Quinlivan: Ms Collins is telling us she believes it is fit for purpose. What is the point of a new agency if this one is fit for purpose?

Ms Eadaoin Collins: It is about greater autonomy for the agency, and it was a Government decision-----

Deputy Maurice Quinlivan: Could that not be done under the existing organisation?

Ms Eadaoin Collins: Under the new agency regime it will have greater autonomy in replacing like-for-like staff and in retaining staff within its corporate structure.

Deputy Maurice Quinlivan: Is Ms Collins satisfied that the ODCE is robustly investigat-

ing and prosecuting breaches of the Companies Act?

Ms Eadaoin Collins: Yes. It has the track record. It has secured prosecutions. It is sending on the files to the Director of Public Prosecutions, DPP. The DPP makes the decision on the prosecution, and the DPP is making that prosecution. The office is extremely well equipped in terms of its specialist skilled staff, therefore, it has the capability to undertake its functions. I believe its track record speaks to the delivery of results.

Deputy Maurice Quinlivan: What does Ms Collins believe the budget will be for the new agency?

Ms Eadaoin Collins: We have secured an extra €1 million for the agency in 2019 to assist with its establishment, and €740,000 is an additional pay budget for the agency. We are identifying any specific posts that will be required as part of the work under way to establish the agency.

Deputy Maurice Quinlivan: To clarify, there is an extra €1 million to establish the agency.

Ms Eadaoin Collins: In 2019.

Deputy Maurice Quinlivan: An additional €740,000 is for additional staff.

Ms Eadaoin Collins: No. It is €1 million in total, of which €740,000 is for staff. The 2019 budget, therefore, will be €6.057 million.

Deputy Maurice Quinlivan: Does Ms Collins believe the €740,000 is enough for the additional staff? She recommended in her submission that forensic investigators and so on were needed.

Ms Eadaoin Collins: We have many of those in place and they are covered within the existing pay structure of the agency. Further work will need to be undertaken to define that, particularly on the operational side of things. Also, any further specialist skills required will be considered as part of the establishment of the agency.

Deputy Maurice Quinlivan: I assume the funding the Department gets is not Ms Collins's decision, which ultimately will be that of the Minister, but investing an additional €740,000 is not taking the issue of white collar crime seriously. The perception is that if we do not pay our TV licence or some minor bill we will be prosecuted but that those who commit white collar crime get off with it. That is sending the wrong signal if there is not enough funding to tackle it. Go raibh maith agat.

Chairman: To continue Deputy Quinlivan's line of questioning, he asked if Ms Collins believed the ODCE was fit for purpose and she believes it is. I am not trying to put her on the spot but as Deputy Kelleher said, following the collapse of the Sean FitzPatrick trial, Judge Aylmer was scathing of the role of the ODCE in respect of various issues including shredding of documents, witness coaching and so on. Since that trial collapsed, has there been any change in personnel in the ODCE that would make Ms Collins state it is now fit for purpose? I believe, as I am sure do many people, that was a damning indictment from Judge Aylmer. If there have not been any changes in personnel since that trial collapsed, why would Ms Collins believe the ODCE is fit for purpose now?

Ms Eadaoin Collins: It would be important to point out that this particular investigation took place between 2008 and 2012. To address the Chairman's specific question, we have

had quite a number of changes in staff personnel. The current director came in in 2012. A huge amount of reform has taken place in the ODCE in recent years. Speaking to the specialist recruitment, eight forensic accountants were recruited of whom seven are in place now in addition to two enforcement portfolio managers, two enforcement lawyers, a digital forensic specialist. These are the new specialist cohort of staff to complement the existing staff within the office and bring a wealth of new skills. There has been two very specific cohorts of training in the area of witness statements.

It is fully accepted that the standard of investigation was below par with the particular investigation to which we are referring. The deficiencies were addressed in the skills available to the office and the depth of experience available. Those issues have been addressed as well as the training in the collection of witness statements. In addition to the new staff, procedural reform has taken place in that every witness taking statement will be led by a garda. That is critical for the standards required for a criminal investigation. It is something that should have happened previously but that is happening now.

Chairman: Page 1 of the submission states: “The new Authority will have between 1 and 3 Commissioners, one to be Chairperson and each will be appointed by the Minister following a recruitment process ...”. Will that depend on the workload?

Ms Sabha Greene: Yes. The idea is to give flexibility. One of the criticisms in Judge Aylmer’s judgment was that the ODCE was not equipped to take on board a number of big cases at the same time. If that arose for it again, it would be able to have an additional one or two commissioners to work with the chairperson. We could have one commissioner over one particular investigation separate from the rest of the work of the body.

Chairman: Does the Department consider the proposed changes to the ODCE adequate to address the issues raised by Judge Aylmer or will we see more changes? We are discussing the heads of the Bill and no Bill is perfect in its infancy. Bills evolve and there are amendments. Does the Department believe the Bill as proposed should be adequate to address the issues raised by Judge Aylmer?

Ms Sabha Greene: In October or November 2017, the Government decided it did not just want to establish it as an agency with a commission structure but that it wanted it properly equipped. To this end, we have agreed to give the ODCE the new powers I outlined in my presentation and the Government has adopted this policy. Other reviews are also going on. A review group was established under the package of measures to combat white-collar crime to examine anti-fraud and anti-corruption structures in Ireland and is due to report in the middle of this year, at the end of June. It may have further recommendations the Government would like to consider. The company law review group has enforcement of company law on its work programme and arising from this we may get additional ideas. There is a lot in this in terms of-----

Chairman: I understand that. Did the Department work closely with the ODCE when drafting the heads of the Bill on failures identified by Judge Aylmer to draft these changes?

Ms Sabha Greene: We worked very closely with the ODCE on preparing the Bill.

Senator James Reilly: I thank the witnesses because their explanations have clarified a number of issues for me, particularly Ms Collins who pointed out the trial ended in 2012 and many of these changes have taken place since then. Obviously, we want Mr. Drennan to come before the committee to explain what has gone on. It was important that we spoke to the De-

partment about the Bill before this happens.

Is it proposed the agency will be under the remit of the Department with a quasi-arms length relationship, a bit like Tusla with the Department of Children and Youth Affairs or several other agencies that are under the remit of Departments but have a budget given to them through the Department by the Minister? Will Ms Greene give a bit of detail on what is entailed?

Ms Sabha Greene: The heads provide that the Minister will appoint one, two or three commissioners. This is the first connection. All the funding will be given with the consent of the Ministers for Business, Enterprise and Innovation and Public Expenditure and Reform. The heads also provide that the staff of the new agency will be civil servants. This is another connection.

Senator James Reilly: They will not be public servants, they will be civil servants.

Ms Sabha Greene: Yes. The idea is the Minister would have overall responsibility and accountability for the agency.

Senator James Reilly: It is a slightly different relationship because HSE staff are public servants.

Ms Sabha Greene: Right.

Deputy Tom Neville: Are other powers being considered for the new authority? Has the ODCE or any other regulatory body requested additional powers?

Ms Sabha Greene: We are still discussing all this with the ODCE. A lot of it requires a great deal more consideration and engagement with the Department of Justice and Equality because there may be consequences throughout the criminal justice system. They have not been brought to the Government as of yet and perhaps they will in due course. As I mentioned earlier, two other reviews are looking at this area with a certain amount of overlap. The Company Law Review Group is very much working on this area, and the review group on anti-fraud and anti-corruption touches on many of these areas. Issues may arise from these that will require new provisions to be inserted into the Bill.

Senator Pádraig Mac Lochlainn: In its report last October, the Law Reform Commission recommended a corporate crime agency. I was my party's justice spokesperson and I remember at the time a key contribution was made by Remy Farrell, a senior counsel. He was heavily critical and stated it had never been a better time for white-collar crime. He referred to the dramatic under-resourcing of a range of agencies, including the ODCE that had one accountant at the time, which was shocking, the Garda bureau of fraud investigation and the Garda computer crime investigation unit. It was a mockery when we consider our State was brought down and made bankrupt by the reckless behaviour of people in the white-collar sector. It is astounding that in 2014, six years after the State collapsed, we had completely under-resourced the agencies responsible for ensuring proper regulatory oversight of the various business sectors. One of the strong recommendations of Remy Farrell and others at the time was the need for one agency under one roof where all of these matters would be dealt with. This is why I need a very strong understanding of why the Department is proceeding in this direction and not with the Law Reform's Commission's recommendation for a corporate crime agency.

Ms Sabha Greene: The Law Reform Commission's recommendations were made at the end of October last year. The heads of the Bill had already circulated within the Government

with a view to being approved, which they were on 4 December, so the recommendations came a little late to get a very comprehensive review. The Law Reform Commission began by recommending that we carry on with the proposal the Government had issued the year before to establish the ODCE as a separate agency. The Deputy is correct that the Law Reform Commission also spoke about a national crime agency, but that would deal with much wider issues than just company law and it needs a bit of thought. This is one of the recommendations of the Law Reform Commission that is being considered by the review group on anti-fraud and anti-corruption structures, so it has not been rejected but is being looked at. The review group involves a range of stakeholders, including the Department of Justice and Equality, the Garda, the Central Bank, the Department, the ODCE and the Competition and Consumer Protection Commission. It is due to make recommendations at the end of June.

Senator Pádraig Mac Lochlainn: I presume the Department will proceed with the Bill. Does Ms Greene foresee the corporate enforcement authority coming under the umbrella of a corporate crime agency and being subsumed into a wider agency at some stage?

Ms Sabha Greene: That will be a matter for the Government to decide in due course. In the meantime, something that comes out very clearly from the Law Reform Commission is the need for strong co-ordination and co-operation between all of the various bodies. The heads include information exchange provisions on a statutory level. There are existing memorandums of understanding and these will have to be redone because it will be a new authority. We are trying to give it statutory support to ensure there is a clear-cut exchange of information and co-ordination, working on what exists. In some ways, that is more important than them all being under one umbrella. The Irish model has been to create bodies which specialise in a particular area of law. It does not matter whether the crime is committed by an individual or a corporation, or on a small or grand scale because the body has expertise in that area of law. For example, we have the Health and Safety Authority and the Office of the Director of Corporate Enforcement, ODCE. That is how we have been doing it and, to some extent, it has worked. The recommendation of the LRC address crimes committed on a big scale by a large corporation. One may not realise the offence is a big deal when one begins an investigation of what one considers likely to be a small fraud. There are questions regarding the stage at which the investigation is escalated to another body. These issues must be teased out in considering the recommendations. It would be a change from our current model of enforcement.

Senator Pádraig Mac Lochlainn: The LRC report identifies and recommends six core powers for financial and economic regulators. I will not read them out as Ms Greene is familiar with them. Does she agree with its assessment? Are those six powers essential? I acknowledge her point that the heads of the Bill were published before the report. However, if she considers those powers essential, is she willing to make further amendments to the legislation to incorporate the points made?

Ms Sabha Greene: The ODCE has many of those powers and will have them under the Bill. One of the recommendations relates to a regulatory enforcement agreement but that is not appropriate to the ODCE because it is not a regulator. It does not have a connection with the companies in respect of which it enforces company law. For example, in the case of the Commission for Energy Regulation there is a licensing or regulatory relationship between the companies and the regulator. There are powers other than those six in the regulatory toolkit, such as the deferred prosecution agreement. As the Senator probably appreciates, those are matters for the Director of Public Prosecutions, DPP, because one would want a centralised approach in that regard. If the powers in the heads of the Bill need some addition or finessing in order

to better incorporate the LRC recommendations and the Government is of the view that such changes are required, then, of course, we will make them.

Senator Pádraig Mac Lochlainn: Is Ms Greene satisfied with the current level of co-operation and interaction between the ODCE and the Garda and the DPP?

Ms Eadaoin Collins: The ODCE has very good working relationships with the Garda and many other organisations. Memorandums of understanding are in place with some bodies. It shares a significant amount of information with the Central Bank, the Revenue Commissioners and the Irish Auditing and Accounting Supervisory Authority and those organisations have a very close working relationship. This can be done in Ireland due to our small scale. Large corporate crime agencies in certain other countries such as the United Kingdom operate on a far bigger scale and tackle very serious cases of wrongdoing, whereas we work collaboratively within the existing structures and speciality streams.

Senator Pádraig Mac Lochlainn: On Brexit, last week, Barclays bank sought permission to transfer €190 billion in assets to its Dublin branch. There will be many such transfers in the coming months. Are such practices being closely observed? Obviously, this is a turbulent time for the economies of these islands and Europe itself and there will be significant transfers of assets. Is Ms Greene satisfied that the level of resources within the ODCE is commensurate with the level of finances that are being transferred to holdings in this State?

Ms Sabha Greene: This goes back to my point that the ODCE is not the regulator. It is a matter for the Central Bank and the Department of Finance to ensure there are sufficient resources to supervise such transfers.

Senator Pádraig Mac Lochlainn: Everything that I have heard in the responses of the witnesses points to the need for an umbrella agency to join all the dots. I acknowledge that they highlighted that, ultimately, the Minister and the Government may need to reflect on that. In their considerable collective experience, do they consider it likely that there would be resistance within the ODCE or the Department to a cross-departmental umbrella organisation which would ensure all of the various elements are working together? I cannot over-emphasise that this State was bankrupted because of the utter recklessness of people we trusted in very important positions, as all present would agree. We must not allow that to happen again, particularly in light of the damage that would be caused our international reputation as a location for investment. The trial of Seán FitzPatrick was referenced earlier by Deputy Kelleher. Would the witnesses be resistant to or supportive of the concept of an umbrella agency?

Ms Sabha Greene: I do not know whether there would be resistance to such an organisation. It is a relatively recent recommendation. Until now, the emphasis has been on ensuring that the various areas of expertise work as closely together as possible while developing their areas of expertise. My only concern would be that if one has a big agency, one may risk losing speciality expertise because there is a limited pool of resources. I am not aware of any resistance to the concept. People are openly considering it. One thing we know from putting together this general scheme is that clarity on one's mandate is very important from an enforcement point of view. One needs to know exactly what it is one is meant to be going after. Different offences bring different challenges and, therefore, different levels of expertise. It needs far more thought but I am not aware of any opposition to it at this stage.

Chairman: The report of the Law Reform Commission published on 23 October 2018 recommends that the economic regulator should have the power to impose significant financial

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sanctions. Is the power to levy administrative financial sanctions rather than having to bring criminal proceedings being considered for inclusion in the heads of the Bill?

Ms Sabha Greene: It is not. As it stands, the ODCE has a limited ability to impose administrative sanctions on the director of a company found culpable of an audit offence. It does not have such powers outside those circumstances. It is more focused on prosecution through the courts. The question of administrative sanctions involves broader constitutional implications for the wider criminal justice system. It is being looked at more broadly.

Chairman: I thank the witnesses for appearing to brief the committee.

The joint committee adjourned at 5.50 p.m until 4 p.m. on Tuesday, 19 February 2019.